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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re C.W., a Person Coming Under the
Juvenile Court Law.

S.W.,

Petitioner,

v.

THE SUPERIOR COURT OF
HUMBOLDT COUNTY,

Respondent.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH AND HUMAN
SERVICES,

Real Party in Interest.

A156893

(Humboldt County
Super. Ct. No. JV190015)

S.W. (Mother) challenges an order of the juvenile court terminating reunification services and setting a hearing to select a permanent plan for her minor child, C.W. (Welf. & Inst. Code, § 366.26).¹ Mother contends no substantial evidence supports the court's findings that there would be substantial danger to C.W. if not removed and there were no reasonable means to protect C.W. without removal. She also asserts the court erred in

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

making findings under section 361.5, allowing bypass of reunification services based on Mother's failure to reunify and termination of parental rights as to two other children. We deny Mother's writ petition on the merits.

BACKGROUND

C.W. was born in December 2018. Mother and her husband W.W. (Husband) have two other children who were detained at birth, in 2013 and 2014 respectively. Mother and Husband received reunification services, but failed to reunify with either child, and their parental rights to both children were terminated. These children were removed "based on the mother's cognitive and developmental delays, the mother and father's mental health issues, the father's substance abuse and the parents' domestic violence."

On the day C.W. was born, the Humboldt County Department of Health and Human Services (Department) received a report that Mother had " 'cognitive deficits' " and " 'serious developmental delays and mental health concerns' " which were affecting her ability to care for C.W. These concerns included Mother's bipolar disorder, personality disorder, post-traumatic stress disorder, attachment issues, and a history of domestic violence issues. Mother had been a lifelong client of the Redwood Coast Regional Center under the "fifth category" of eligibility, based on her combined mental health issues and developmental delays. During the dependency proceedings for her two other children, she "was reported to have borderline functioning in caring for herself in all areas, including grooming, nutrition, appointments, etc."

A nurse reported "the night shift nurses were concerned after finding [C.W.] sleeping face down, in the hospital bed with [Mother]." Mother "kept needing reminding to care for the newborn, and she was not responsive to [C.W.] who had been 'screaming throughout the night.' "

A child and family team meeting was held three days after C.W.'s birth. Numerous individuals attended the meeting: Mother, Husband, Public Health Nurse Hutchins, a social worker, a social worker supervisor, Mother's client health outreach worker, Mother's mental health case manager, Mother's field public health nurse,

Mother's midwife, a case manager and counselor from Open Arms Reproductive Health Care Services, a case manager for housing support, a representative from Mobile Outreach, and a family friend. Mother also had a second public health nurse, a Redwood Coast Regional Center case manager, a Del Norte nurse, and representatives from Changing Tides Family Services who were unable to attend. Mother reported she had obtained housing in Crescent City that "required her to be there for at least seven days each month." Mother and the service providers explained she had completed a number of classes in preparation for C.W.'s birth, and was able to retain information, but it "took extra time." Mother was receiving extensive supportive services, including one-on-one meetings three to four times a week with the Changing Tides Nurturing Parenting Program, weekly public health nurse visits, in home support services, and was meeting with her client health outreach worker multiple times per day.

Although Mother was married to Husband at the time of C.W.'s birth and they were, according to Mother, "in a good place in their relationship," Mother reported Husband was not C.W.'s father, and she did not know who was.

About ten days later, the public health nurse reported she was visiting Mother and C.W. twice weekly. They were living with Husband in a hotel room. C.W. was nursing and had gained weight. Mother was reportedly keeping track of her feeding on a log, but had misplaced it. The public health nurse "noted concern" about the amount of clutter in the hotel room, and that she "had to prompt the parents to obtain a clean storage container for the breast pumping equipment because it appeared dirty." A few days later, the Department received a report "with worries that there was another woman living with [Mother and Husband], and helping care for [C.W.]. This woman had reportedly been observed talking to herself."

The Department concluded, "Court Ordered Family Maintenance Services would be most appropriate for [C.W.], to monitor and support the family in their newly stabilizing housing, engagement in services, and sobriety." In late January, it filed a "non-detained" section 300 petition, alleging C.W. came under juvenile court jurisdiction based on abuse or neglect of two siblings. (§ 300, subd. (j).)

A week later, another meeting was held with Mother, Husband, their service providers and the Department. Someone expressed a “worry” about Mother “forgetting about baby [C.W.] and walking away from her.” Mother reported she had “ten mental health disorders, and that she was not on medication or seeking treatment.” She stated she “ ‘had it under control’ with tools that she had on a notecard, which she did not have with her.” Mother further stated her case plan needed to be simplified because she was “ ‘at a first or second grade level.’ ” Concerns were raised about the friend who had been staying with Mother and Husband and “helping” with C.W. Mother and service providers agreed this friend was stealing from Mother. When the meeting was over, Mother “walk[ed] out of the room on her way out [of] the building, without retrieving [C.W.]” After talking to the service providers for a few minutes, she realized she needed to get C.W., but “then waited for one of her parent partners to push [C.W.] in the stroller towards her.” After the meeting, “further concerns were reported to the Department, that some of the service providers weren’t being transparent with their worries about baby [C.W.] in [Mother and Husband’s] care.”

Based on this new information, the Department obtained a protective custody order on February 1, 2019, and filed an amended section 300 petition, alleging failure to protect.

Following a detention hearing, the court found a need for continued detention of C.W. based on “substantial danger to the physical health of the child or the child is suffering severe emotional damage and there are no reasonable means by which the child’s physical or emotional health may be protected without removing the child.”

The court ordered the Mother and Husband to disclose the identity of all possible parents of C.W.² It ordered continued services for Mother, including parent education, domestic violence counseling, and continued services through the Regional Center,

² Mother had reported C.W.’s father could be “ ‘ten other dudes,’ ” but she did not know how to contact them because they met online. The record does not reflect that the biological father of C.W. has been identified, although one man has been ruled out as the father.

Chance for Change, and Changing Tides. Mother was to have daily, “loose[ly] supervis[ed]” visitation, with “community care providers, Department, individuals, as well as approved relatives who would be checking in with Mom.”

In the Jurisdiction/Disposition Report, the Department reported Mother “has demonstrated a struggle with retaining information and information needs to be repeated to her multiple times for her to retain it.” Mother had “stopped regularly participating with her parent support specialists from Changing Tides.” Mother demonstrated a “lack of insight” into her own intellectual disability, telling a social worker she does not need assistance in retaining information or performing tasks. She would often become distracted, and walk away from C.W., leaving her unattended in public. Mother did not know how to properly secure C.W. in a car seat, how to soothe her when upset, how to “prepare a bottle for her without a cue card, or when it is appropriate to change or feed [C.W.]” Mother also had difficulties bathing C.W. When a service provider asked Mother to demonstrate how she prepared the bath, the provider reported the water was “ ‘[h]ot enough to boil spaghetti.’ ” Mother’s regional center case manager reported that if Mother “were to have the child in her care, she would need constant, in-home supervision, direction, and support.”

Mother’s family and service providers reported her mental health “contributes to her tendency to make risky and unsafe relationships,” including letting unsafe people into her home and being taken advantage of by others. Most recently, Mother allowed a woman who was having auditory hallucinations to stay overnight in the hotel room and take care of C.W. Mother also reported contacting numerous men via an online app, and meeting with them in person. She intends to stay with her Husband, with whom she has a history of domestic abuse.

The Department also reported recent concerns about substance abuse, which had not been an issue in the past. Mother and Husband arrived at a drug-testing site, but refused to take a test. Mother reportedly was heard saying to Husband, “ ‘We can’t do that, it will show, it will show.’ ” Mother also “self-reported that she was ‘hella drunk’ when she met one of [C.W.’s] potential fathers and had sex with him.”

Mother was also unable to handle her own finances. Her “intellectual disability impacts her ability to manage money or plan for the future.” She receives SSI, but the Humboldt County Public Guardian is her payee and controls her funds. Mother is “resistant to setting a budget,” and “refuses to contribute to her housing [costs] . . . at this time.” In late February, when told she would need to contribute to her rent, Mother became extremely upset and “exclaimed that she was moving immediately to Crescent City and never wanted to see her baby again.”

Although Mother was reported to be “loving and doting” to C.W. during visitation, she “has become dependent on service[] providers in regards to the care of [C.W.]” She “struggles to soothe or otherwise attend to the child when the child cannot be soothed by feeding,” and “did not respond to the child when it was choking or crying.” Mother also displayed “intermittent memory lapse when it came to performing the steps necessary to secure the child in a car seat and in making bottles to feed the child.”

Following the jurisdictional hearing, the court sustained the amended petition, finding true the allegations of failure to supervise or protect and abuse or neglect of siblings.

In an addendum to the status report for the dispositional hearing, the Department requested no reunification services be provided under section 361.5, subdivision (b)(10) and (11), based on Mother’s failure to reunify and termination of parental rights as to two other children.

The Department reported that while some of Mother’s visits with C.W. went well, during others Mother was distracted and on her cell phone. When a social worker picked up Mother for one visit, Mother chose to sit in the back seat of the car and was on her cell phone for the entire trip. During the phone call, Mother asked the person she was talking to if “she could say she was staying with them.” Mother also told the person she was “let[ting] [C.W.] stay in CWS custody” so she could get ready to move to Crescent City, and that once she picked up the baby, she would be receiving cash and food stamps that she would share with the person on the phone.

During a medical appointment for C.W., Mother was on her phone and “ignored the nurse [who] was asking questions about [C.W.] and [Mother’s] pregnancy.” When asked by the social worker if she wanted to hold and feed C.W., Mother “looked up from her phone, looked at the baby, and said ‘no,’ and then went back to her phone.”

The Department also reported Mother and Husband had been involved in a “disturbance.” Husband was throwing things at Mother, and police responded.

Following the contested dispositional hearing, the court found there was “a substantial danger to the physical health, safety, protection or physical emotional well-being of the child or would be if the child were returned home, and there’s no reasonable means by which the child’s physical or emotional health can be protected without removing the child from the physical custody of the mother. . . . [¶] . . . [¶] Mother’s progress has been minimal, though she’s done a lot of things. [¶] The Court finds by clear and convincing evidence that the Department has complied with the case plan. . . . [¶] Furthermore, the Court finds by clear and convincing evidence that reasonable efforts were made to prevent or eliminate the need for removal. . . . [¶] . . . [¶] The Court also finds that there’s a termination of reunification services for a sibling or half-sibling of the child . . . because the parent failed to reunify with the sibling or half sibling . . . or the Court ordered parental rights permanently severed and the currently detained child was removed from the same parent who in either case has not subsequently made a reasonable effort to treat the problem that led to the removal of the sibling or half sibling.”

The court declared C.W. a dependent child, denied reunification services, and set a section 366.26 hearing.

BACKGROUND

Removal of C.W. From Mother’s Custody

Mother asserts no substantial evidence supports the juvenile court’s finding that there is or would be a substantial danger to C.W. if not removed from her custody under section 361, subdivision (c)(1).

Section 361 provides in part: “A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the

petition was initiated, unless the juvenile court finds clear and convincing evidence. . . . [¶] There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor. . . ." (§ 361, subd. (c)(1).) "A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on other grounds by *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

The record showed the following: Mother's parental rights to her two other children had already been terminated. Mother has significant cognitive and developmental delays that compromise her ability to safely care for C.W. She self-reported being at a " 'first or second grade level.' " Despite intensive intervention and assistance from numerous service providers, Mother was consistently unable to care for C.W. without assistance. Her attention was frequently diverted away from C.W. and the professionals attempting to assist her, and she often forgot the infant entirely. Mother struggled to retain information, and had difficulty preparing a bottle without a cue card or understanding how to safely bathe an infant. She engaged in "risky and unsafe relationships," allowing people into her home who took advantage of her. Mother's regional center case manager reported that if Mother "were to have the child in her care, she would need constant, in-home supervision, direction, and support."

In sum, the court's substantial danger finding is supported by ample evidence.

Means To Protect C.W. Other than Removal

Mother claims the juvenile court failed to consider other reasonable means to protect C.W., as required by section 361, subdivision (c)(1). She asserts such means included Mother and Husband separating or Mother moving to Crescent City.

Section 361, subdivision (c)(1) provides: “A dependent shall not be taken from the physical custody of his or her parents . . . [unless] [¶] . . . there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s. . . . The court shall consider, as a reasonable means to protect the minor, each of the following: [¶] (A) The option of removing an offending parent. . . .” (§ 361, subd. (c)(1)(A).)

Even were Mother and Husband to separate and/or were Mother to relocate to Crescent City, all the other issues placing C.W. at risk, which we have discussed above, would remain. Indeed, the primary reason for C.W.’s removal was Mother’s inability to provide proper care for the child due to her “ ‘cognitive deficits’ ” and “ ‘serious developmental delays and mental health concerns.’ ” And there was no evidence that separation from Husband, or Mother’s relocation, would address these fundamental hurdles to safe and appropriate care of C.W.

At the detention hearing, Mother’s attorney suggested that “the mother, perhaps, could move up to Crescent City with the grandparents.” The court indicated “if there was a place where the mother could co-reside in an approved home, that would be ideal.” “[F]or example, if you were to say that there’s a plan for you to be safely in Crescent City, with all the things I talked about, the Department can look into that between now and the next court date.” The Department then searched for a placement where Mother could co-reside with C.W. and a caregiver. But it was unable to identify any such potential placement. Mother’s parents indicated “they cannot be [a] placement at this time.” A family friend in Crescent City was willing to be a placement for C.W., alone. Mother’s sister was also a potential placement, but only for C.W.

In short, the Department was unable to locate any placement that would accept both C.W. and Mother, and the court did not fail to consider other alternatives.

Reasonable Efforts to Prevent or Eliminate the Need For Removal

Mother also maintains the court “failed to fully vet whether reasonable efforts were made by the [D]epartment to prevent or eliminate the need for removal” under section 361, subdivision (e). She specifically asserts “[t]here was no indication in the

record that the department had discussed with the Regional Center . . . any housing options to support the mother and child.”

To the contrary, the record demonstrates the Regional Center was already partially paying for Mother’s motel housing. Numerous social service providers, including the Regional Center, were providing services to Mother and C.W, both at the hospital and at the motel. Despite these services, Mother was unable to adequately care for C.W. And, as set forth in the previous section, the Department made many attempts to locate a placement for both C.W. and Mother, but none were available.

Denial of Reunification Services Under Section 361.5, Subdivision (b)(10)

Mother additionally claims the court erred in making findings under section 361.5, subdivision (b)(10). Specifically, she maintains “Finding number 12(j) . . . broadens the language of Section 361.5, [subdivision] (b)(10) and improperly states an additional fictitious basis for denial of services that is not reflected in the statute.”

Under section 361.5, subdivision (b), “[r]eunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: . . . [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian. [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.” (§ 361.5, subd. (b)(10), (11).) When one of these exceptions applies, “[t]he court shall not order reunification . . . unless the court finds, by clear and

convincing evidence, that reunification is in the best interest of the child.” (§ 361.5, subd. (c)(2).)

In its order, the court checked the box denominating a finding that: “The Court ordered termination of reunification services for a sibling or half-sibling of the child because the parent . . . failed to reunify with the sibling or half-sibling after removal from that parent . . . or the Court ordered parental rights permanently severed and the currently detained child was removed from the same parent . . . who, in either case, has not subsequently made a reasonable effort to treat the problems that led to the removal of the sibling or half-sibling.”

Mother asserts the language of this finding does not exactly track the language of section 361.5, subdivision (b)(10), and thus added additional bases for bypass of services. That is not a fair or reasonable reading of the order. It is readily apparent the preprinted finding encompasses the necessary findings for section 361.5, subdivision (b)(10) and (11). In other words, the finding includes two appropriate bases for bypassing reunification services—that Mother failed to reunify with a sibling or half-sibling of C.W., and that the court previously ordered Mother’s parental rights to these siblings or half-siblings permanently severed. (§ 361.5, subd. (b)(11).)³

Mother asserts the phrase “ ‘in either case’ ” improperly added “as a basis for bypass of services the allegation or fact that the mother has not made reasonable efforts prior to disposition in the present child [C.W.’s] case.” (Italics omitted.) However, the phrase in the finding that “the same parent . . . who, in *either case*, has not subsequently made a reasonable effort to treat the problems that led to the removal of the sibling or half-sibling” (italics added), plainly refers to both bases for bypass. Thus, the court’s finding correctly stated that, whether bypass of reunification was due to Mother’s failure

³ Even if the court erred in finding section 361.5, subdivision (b)(10) applied, Mother does not challenge the court’s finding under section 361.5, subdivision (b)(11). “[O]nly one valid ground is necessary to support a juvenile court’s decision to bypass a parent for reunification services” (*In re Madison S.* (2017) 15 Cal.App.5th 308, 324.)

to reunify or due to permanent severance of parental rights, Mother had “not subsequently made a reasonable effort to treat the problems. . . .”

Mother also claims that, although the court found that Mother “has not subsequently made a reasonable effort to treat the problems that led to the removal of the sibling or half- sibling,” “the [D]epartment failed to present sufficient evidence justifying [that] finding.”

“We do not read the ‘reasonable effort’ language in the bypass provisions to mean that any effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is certainly appropriate for the juvenile court to consider the duration, extent and context of the parent’s efforts, as well as any other factors relating to the quality and quantity of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the focus of the inquiry, a parent’s progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the reasonableness of the effort made.” (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914, italics omitted.)

While the evidence showed Mother was provided with substantial support services, she has simply been unable to make the progress necessary to address the problems we have discussed above that have led to the removal of all three of her children. As the court found, “Mother’s progress has been minimal, though she’s done a lot of things.”

DISPOSITION

The petition for extraordinary writ is denied on the merits and the request for stay is denied. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

Banke, J.

We concur:

Humes, P.J.

Margulies, J.

A156893, *In re C.W.*

